

REMARKS

Claims 25-28 are pending in the application.

Claims 25-28 stand finally rejected.

Claim 28 has been amended herein.

Reconsideration of this application as amended is respectfully requested.

I. FIRST ACTION FINAL REJECTION

The examiner has finally rejected claims 25-28 on first action. The examiner supports this action by stating that all claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application.

Applicant submits that this action is totally improper in view of the advisory action mailed August 9, 1994. In that advisory action, the examiner refused to enter an after final amendment which was mailed on July 20, 1994 because the claims added therein raised new issues that would require further consideration and/or search. In particular, the examiner stated that "first tubular member having a frustoconically shaped outer surface...and a frustoconically shaped inner surface set forth in claim 25 raises new issues that require further search and consideration".

When applicant re-filed this case on August 17, 1994, it was requested that the amendment of July 20, 1994 be entered as a preliminary amendment. The claims recited in that amendment which raised the new issues are the claims at issue in this case which have been finally rejected on first action. Thus, the claims of this case (which raised new issues as far as the examiner was concerned in August) can not be considered drawn to the same invention claimed in the earlier application.

On or about the first week of January, 1995, applicant's attorney, Paul Schwarz, Reg. No. 37,577, had a phone interview with Examiner McGlashen to discuss this matter with him. Examiner McGlashen indicated during this interview that the first action final rejection was improper and would be withdrawn. At

G

that time, applicant's attorney requested that an interview summary form indicating the withdrawal of the final rejection be mailed for applicant's file. As of the date of this letter, no interview summary has been received by the applicant or Attorney Schwarz.

In any case, applicant respectfully requests that the examiner withdraw the final rejection of the claims as earlier agreed to and enter this amendment.

II. 35 USC §103 REJECTION

Claims 25-28 stand finally rejected under 35 USC §103 as being unpatentable over Solazzi '854. The examiner states that Solazzi discloses the invention substantially as claimed except for the combination of the collar and ring formed as a single ring member. The examiner concludes that such a difference is a matter of obvious engineering choice.

This rejection is traversed and reconsideration and withdrawal of the same is respectfully requested in view of the forgoing.

From the examiner's rejection it is apparent that he has overlooked much of the structure recited in new claim 25. In particular, claim 25 requires a "first tubular member having a first end, a second end, and a **frustoconically shaped outer surface that converges continuously from said first end to said second end**" and a "second tubular member having a first end and a second end...said second tubular member including a **frustoconically shaped inner surface which converges continuously from said first end to said second end**".

The examiner does not address these frustoconically shaped structures in his rejection of the claims although these same limitations raised new issues which required further consideration and search according to the examiner in the advisory action mailed August 9, 1994.

In any case, the examiner should recognize that the outer surface of the tubular member 17 in Solazzi '854 does not include a frustoconically shaped outer surface which converges

continuously from the first end to the second end. At best, the tubular member in Solazzi '854 has a frustoconically shaped outer surface which starts converging from an area of the tube which is intermediate the first and second ends and then extends toward the second end. Further, in Solazzi '854, the first end of the second tubular member doesn't abut against the annular flange of the first tubular member when fully assembled as presently claimed.

The instant invention provides many improvements over the prior art including in particular, the elimination of the need to trim excess thin film material formed around the cell body which reduces the operational steps and labor in assembling the sample cups.

More importantly, however, is the way the instant invention allows the sample cup to be assembled with a more consistent wrinkle-free thin film material that provides a consistently planar sample surface which improves the reliability of the data.

Claim 25 clearly distinguishes the instant invention in this regard and in particular recites that when the first and second tubular members are initially engaged with each other to assemble a sample receptacle, the second tubular member entraps the thin film between its inner surface and the outer surface of the first tubular member. Then, as the second tubular member is pushed into full engagement the inner surface of the second tubular member grasps the overhanging portion of the thin film and acts to **progressively increase the tautness of the film** which extends across the second end of the first tubular member.

The structure of the Solazzi '854 patent is not capable of progressively increasing the tautness of the film as the cup components are assembled because the short length of the collar prevents the collar from grasping and pulling the film any significant distance during assembly.

Even without considering the frustoconical structure of the presently claimed invention, applicant finds nothing in Solazzi '854 or in any other reference of record which suggests that the annular collar and snap ring in Solazzi '854 can be or should be

made as a single tubular member adapted to engage the circumferential edge of the receptacle member. In fact the only motivation the examiner comes up with for wanting to modify Solazzi as claimed is the applicant's own disclosure. This is made evident when the examiner's states that "an extended one-piece ring would engage the flexible film between the collar and sample cup over a wider surface area thereby creating a better friction fit than the two-piece design".

Accordingly, claim 25 and claims 26-28 which depend therefrom, distinguish over the prior art of record, and as such, should be allowed to issue.

III. CONCLUSION

In view of the foregoing, the applicant submits that claims 25-28 are currently in condition for allowance, early notification of which is earnestly solicited. Should there remain any questions or other matters whose resolution may be advanced by a telephone call, the Examiner is cordially invited to contact the applicant's undersigned attorney at his number below.

If there are any fees due and owing, please charge Deposit Account No. 16-2131.

Respectfully submitted,

ARTHUR L. PLEVY
Reg. No. 24,277
ATTORNEY FOR APPLICANT

P.O. Box 1366
146 Route 1 North
Edison, N.J. 08818-1366
(908) 572-5858
ALP/PAS